



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0567; FRL-9001-02-R9]

Air Plan Approval; Hawaii; Interstate Transport for the 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision from the State of Hawaii addressing requirements in the Clean Air Act (CAA or “Act”) regarding interstate transport for the 2015 ozone national ambient air quality standards (NAAQS). Hawaii submitted a SIP revision on November 12, 2019, addressing the CAA provision prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment or interfere with maintenance of the NAAQS in any other state (the “good neighbor” provision). The EPA is finalizing approval of Hawaii’s good neighbor SIP revision for the 2015 ozone NAAQS.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0567. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who

needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Thomas Kelly, Air Planning Office (AIR-2), EPA Region IX, (415) 972-3856, *kelly.thomasp@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. Summary of Proposed Action
- II. Public Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Summary of Proposed Action

On September 28, 2021, the EPA published a notice of proposed rulemaking (NPRM or “proposed rule”) for the State of Hawaii.¹ We proposed approval of the Hawaii SIP revision that addresses the CAA requirement prohibiting emissions from one state in amounts which significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The Hawaii Department of Health (HDOH) submitted its good neighbor SIP revision for the 2015 ozone NAAQS by letter dated November 12, 2019.²

We proposed to find that Hawaii would not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The rationale for EPA’s proposed rule is provided in the NPRM.

II. Public Comments

Our September 28, 2021 proposed rule provided a 30-day public comment period that closed on October 28, 2021. We received no adverse comments. One anonymous commenter supported the proposed action.

¹ 86 FR 53571.

² Letter dated November 12, 2019, from Bruce Anderson, Ph.D., Director of Health, HDOH, to Mike Stoker, Regional Administrator, U.S. EPA, Region IX.

III. Final Action

The EPA is approving, as a revision to the Hawaii SIP, HDOH's good neighbor SIP revision submitted on November 12, 2019. This revision is approved as meeting CAA section 110(a)(2)(D)(i)(I) requirements that emissions from each state do not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this final rule merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final rule:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the

finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Infrastructure SIP, Interstate transport, Nitrogen oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 15, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C 7401 *et seq.*

Subpart M—Hawaii

2. In § 52.620, amend the table in paragraph (e) by adding an entry for “Hawaii State Implementation Plan Revision to address CAA 110(a)(2)(D)(i)(I) for the 2015 Ozone National Ambient Air Quality Standards” immediately after the entry for “Hawaii State Implementation Plan Revision to Address CAA Section 110(a)(2)(D)(i)(I) for the 2008 Ozone National Ambient Air Quality Standard, excluding Attachment 3” to read as follows:

§ 52.620 Identification of plan.

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(e) * * *

EPA-Approved Hawaii Nonregulatory and Quasi-Regulatory Measures

Name of SIP provision	Applicable geographic or nonattainment area or title/subject	State submittal date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
State of Hawaii Air Pollution Control Implementation Plans for Nitrogen Dioxide, Ozone, PM_{2.5}, and Lead				
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Hawaii State Implementation Plan Revision to address CAA 110(a)(2)(D)(i)(I) for the 2015 Ozone National Ambient Air Quality Standards	Statewide	November 12, 2019	[Insert date of publication], [Insert <i>Federal Register</i> citation]	Approved SIP revision excludes Attachment 2 (“Summary of Public Participation Proceedings”)

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[FR Doc. 2021-27556 Filed: 12/23/2021 8:45 am; Publication Date: 12/27/2021]